HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ.
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition No. 283 of 2002

PETITIONER Sunkara Kalirao, aged about 54 years, S/o Late Shri S. Narayan Rao, R/o Khursipar, Babunagar, Jalram Chowk, Zone-II, Bhilai, 11, c/o Singh Kirana Stores, Bhilai, District Durg, C.G.

Versus

RESPONDENTS

1. Union of India, through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Senior Divisional Personnel Officer, South Eastern Railways, Bilaspur, C.G.
3. Central Administrative Tribunal, Jabalpur, M.P.
4. Shri M.P. Yadav
5. Shri A. Sai Kumar
6. Shri R.K. Verma
7. Shri Toshram

(Respondents No. 4 to 7 are AC/Technician/III working at Durg. All to be served through the respondent No.2.

Present : Smt. Renu Kochar, counsel for the petitioner.

Shri P.S. Koshy, counsel for respondents No. 1 and 2.

None for other respondents.

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ORAL ORDER

(Passed on 15th March, 2007)

The following oral order of the Court was passed by **H.L. Dattu, C.J.**

Notice of this petition was issued to all the respondents. Respondents No.1 and 2 have entered appearance through learned counsel Shri P.S. Koshy. Respondents No. 5, 6 and 7 are served, but unrepresented before this Court. Respondent No.4 was issued notice, but the same is not served. Since we intend to remand the matter to Central Administrative Tribunal, Jabalpur, M.P., service of notice on respondent No.4 may not be necessary.

(2) In the instant petition, petitioner who was an employee in South Eastern Central Railway, Bilaspur, has called in question the order passed by the Central Administrative Tribunal, Jabalpur ("the Tribunal" for short) in O.A. No.546/2001 dated 04.09.2001. By the impugned order, the Tribunal had rejected the application filed by the applicant/ petitioner solely on the ground of delay and laches.

(3) The grievance of the applicant/ petitioner before the Tribunal was that though he was senior to respondents No.3 to 6 in the cadre of Air Conditioned (AC) Coach Attendant, in the seniority list prepared, he has been placed at the bottom of the respondents No.3 to 6, therefore, he was seeking a direction to respondents No.1 and 2 to assign appropriate seniority to the applicant/ petitioner.

(4) The Tribunal being of the view that for the first time, the applicant/ petitioner is questioning the seniority list prepared and published by the respondents on 08.02.1989, nearly after 12 years from

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the date of said publication, has applied the "doctrine of laches" and has rejected the application.

(5) Learned counsel appearing for the petitioner would vehemently contend before us, that in the matter of seniority, prepared by the employer, the aggrieved person can question the same when occasion arises. In the instant case, for the first time, the respondent – authority has issued call notices to respondents No. 3 to 6 to consider their cases for the promotional post of AC/Technician Grade III and Grade II and the petitioner was not issued with any notice, and therefore after making representation before the respondents and since he did not get any response from them, he had filed an application before the Tribunal in the year 2001 itself.

(6) *Per contra*, Shri P.S. Koshy, learned counsel for respondents No.1 and 2 justifies the impugned order passed by the Central Administrative Tribunal.

(7) It is a general principle that the Courts in exercise of their discretion are reluctant to grant relief on the ground of inordinate and unexplained delay or laches. The exercise of discretion against granting relief on the ground of delay and laches is in aid of ensuring that the settled seniority is not disturbed. The Courts have also taken the view that the relief to an applicant may be refused, if the delay is substantial and this will again depend on the facts and circumstances of each case. What would be a proper explanation in a given case would again depend on the facts and circumstances of each case. The Apex Court in the case of **G.P. Doval vs. Chief Secretary, Govt. of U.P. (AIR 1984 SC 1527)** has rejected the argument of delay as a bar to

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grant relief on the ground that the seniority list was not finalized and representations did not yield any response coupled with the fact that the employees belonged to the lower echelons of service.

(8). Keeping in view the law declared by the Apex Court, we have carefully perused the averments made by the applicant in the application. It is stated by him, that, firstly he was not aware of the seniority list of A.C. Coach Attendants prepared by the respondents. It is his further case that the said seniority list was not even published by the respondents nor circulated to the employees. His further assertion is that he came to know of the seniority list only when he was not called for the interview by the contesting respondents, though the others who had been promoted along with him were called for the interview to fill up the next promotional post. This assertion of the petitioner is not seriously disputed by the contesting respondents in the return filed by them before the Tribunal. In a situation like this, the Tribunal instead of rejecting the application only on the ground of delay and laches, that too when it is not going to affect large number of employees, should have decided the case on merits. In view of all these circumstances, we deem it proper to set aside the order passed by the Tribunal and remand the matter to the Tribunal to decide the application on merits. Accordingly, the following :

Order

(i) The petition is allowed. The order passed by the Central Administrative Tribunal in O.A. No.546/2001 dated 04-09-2001 is set aside.

(ii) Now, the matter is remanded to the Tribunal with a direction to restore the application to its file and decide the

same on merits, after affording an opportunity of hearing to all the parties.

(iii) In the facts and circumstances of the case, parties are directed to bear their own costs.

Sd/-
Chief Justice

Sd/-
Vijay Kumar Shrivastava
Judge